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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of RAMONA and PAUL JARAMILLO.
RAMONA JARAMILLO,  Respondent,  v.  PAUL JARAMILLO,  Appellant.

F057345

(Super. Ct. No. F9372)

**OPINION**

APPEAL from a judgment of the Merced County Superior Court. Gerald W. Corman, Judge.

Mary Rafani-Steele for Appellant.

No appearance for Respondent.

Appellant, Paul Jaramillo (Paul), and respondent, Ramona Jaramillo (Ramona),<sup>1</sup> were married in 1988. Paul and Ramona's daughter was born in 1992. Although the parties separated on December 31, 1997, a petition for dissolution was not filed until July 2001.

On November 19, 2008, a trial was held on certain reserved property issues. After hearing argument and testimony, the court proposed a settlement to which the parties agreed. The parties were to keep the property as previously divided and currently in their possession. Further, no equalizing payment would be ordered.

On appeal, Paul contends that: the community property residence was not disposed of properly; he is entitled to credit for his post separation payment of community debt under *In re Marriage of Epstein* (1979) 24 Cal.3d 76; and he was coerced into accepting the settlement proposal.

As discussed below, Paul has not met his burden of demonstrating error on appeal. The residence had been divided previously and the propriety of that disposition was not before the trial court. Further, the court did not abuse its discretion when it determined that Paul's post separation debt payments fulfilled his child support obligation. Finally, Paul has not shown that his agreement to the court's settlement proposal was coerced. Accordingly, the judgment will be affirmed.

## DISCUSSION

### ***1. Paul's objection to the disposition of the marital residence is not justiciable.***

In November 2003, the court awarded the marital residence to Ramona. In accordance with that order, Paul deeded the property to Ramona in December 2003. The property was sold in 2006 for \$41,500.

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<sup>1</sup> As is customary in family law cases, the parties will be referred to by their first names for purposes of clarity. No disrespect is intended.

At the November 19, 2008, hearing, Paul requested he be awarded one-half of the proceeds of this sale, or \$20,750. Ramona testified that the sale did not result in any net profit.

The trial court found that the record before it on the division of the marital residence was unclear. Nevertheless, because the record indicated that the house had been awarded to Ramona in 2003, the court concluded that it did not have jurisdiction to address the issue at that juncture. However, the court informed Paul that, if he wanted to obtain a transcript from the 2003 hearing and present evidence regarding the specifics of the 2003 order, the court would entertain a separate motion on the issue.

In this appeal, Paul argues that the trial court violated the Due Process Clause when it disposed of the marital residence without a hearing or a trial. However, the court made that order in 2003. The court did not make any order regarding the disposition of the residence at the hearing that is the subject of this appeal. Rather, the court ruled that it did not have jurisdiction to do so.

The time for appealing the 2003 order awarding the marital residence to Ramona has long since passed. Accordingly, this court does not have jurisdiction to review that order. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 107-109.) Rather, the appeal is from the judgment following the November 19, 2008, hearing. Therefore, the appeal is limited to the issues relating to that judgment. (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 625.)

## ***2. The trial court did not abuse its discretion in making the Epstein credits ruling.***

In *In re Marriage of Epstein*, *supra*, 24 Cal.3d at pages 83-84, the court held that a spouse may claim reimbursement for amounts spent after separation on preexisting community obligations. Such reimbursement amounts are generally referred to as *Epstein* credits. However, there are certain situations where reimbursement is inappropriate. For example, “reimbursement should not be ordered where the payment

on account of a preexisting community obligation constituted in reality a discharge of the paying spouse's duty to support the other spouse or a dependent child of the parties." (*Id.* at p. 85.) Payment of a debt may constitute payment of child support and when in fact it does, reimbursement is inappropriate. (*Ibid.*) Moreover, if no temporary support order has been issued, the right of reimbursement is restricted so that a spouse's support obligation is considered before allowing that spouse credits for post separation payments on community obligations. (*In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1271.) Whether to award *Epstein* credits and in what amount is left to the trial court's discretion. (*Id.* at p. 1272.)

As noted above, although the parties separated in 1997, a dissolution petition was not filed until 2001. Paul was ordered to pay \$273 per month in child support in September 2001. No temporary support orders were previously issued.

Based on the testimony of the parties, the court found that, after they separated, Paul paid \$30,000 toward community debt. However, the court concluded that Paul's payment of the \$15,000 that would have been charged to Ramona constituted a discharge of Paul's child support obligation for the five year period before support was ordered. The court calculated that Paul would have paid approximately \$15,000 in support and therefore concluded that any *Epstein* credits that could have been awarded were canceled out.

Paul contends that *In re Marriage of Epstein* does not authorize the order made by the trial court. Paul interprets the denial of *Epstein* credits as a retroactive child support award in violation of Family Code section 4009.

Contrary to Paul's position, the trial court's *Epstein* credits order was within the parameters of the *Epstein* rule. Paul had a duty to support his minor child and did not provide such support directly between 1997 and 2001. Under these circumstances, the trial court acted within its discretion in determining that Paul's post separation payments

of the community obligations constituted a discharge of his support obligation. Therefore, reimbursement for those payments would have been inappropriate.

**3. *Paul has not demonstrated that his agreement to the settlement proposal was coerced.***

At the conclusion of the hearing, Paul offered to settle the case for a \$15,000 equalizing payment from Ramona. In response, the court explained to Paul that the court would not award the \$15,000 in potential *Epstein* credits to him because his support obligation canceled out that amount. The court informed Paul that, even if everything currently at issue were resolved in his favor, he would at most receive an award of \$1,300.

The court then discussed the issues that had not been resolved. The court noted that, although Paul denied it, there was evidence that he had received \$80,000 in insurance proceeds when the marital residence burned down. Further, the court could order Paul to pay attorney fees. Additionally, there was the issue of the decrease in the value of the marital residence due to Paul's having stored toxic chemicals on the property. Thus, the court explained, if the hearing proceeded, Paul could be ordered to make an equalizing payment to Ramona.

The court also observed that, even if one or the other party received a judgment, that judgment would probably not be collectible. Ramona was unemployed and Paul had recently filed bankruptcy.

Based on the above, the court suggested that the parties accept the court's proposal that a judgment be entered awarding each party the property that they already had. It would be treated as an equal division and no fees or equalizing payments would be ordered. Paul stated that he understood the proposal and agreed to it.

Paul now contends that the court haphazardly considered all information, including hearsay, from counsel and the parties, and made a summary disposition of the

case. Paul argues the court erred in not considering the house and in making the *Epstein* credits ruling. As such, Paul asserts, the court “coerced the parties into making a settlement agreement that was neither based in law or on an informed decision.”

As discussed above, the court did not make the legal errors alleged by Paul. The disposition of the house was not before the court. Further, the court acted within its discretion in making the *Epstein* credits ruling. Moreover, contrary to Paul’s characterization, the court merely assessed the various factors involved in the case, including the parties’ insolvency, and suggested that it would be in everyone’s best interest to end the proceedings. This conduct did not constitute coercion.

### **DISPOSITION**

The judgment is affirmed. The parties shall bear their own costs on appeal.

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Levy, J.

WE CONCUR:

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Wiseman, Acting P.J.

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Kane, J.